

Article 8B.

Taxes Upon Insurance Companies.

**§ 105-228.3. Definitions.**

The following definitions apply in this Article:

- (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of the General Statutes, regulating hospital, medical, and dental service corporations.
- (1a) Captive insurance company. – Defined in G.S. 58-10-340.
- (1b) Foreign captive insurance company. – A captive insurance company as defined in G.S. 58-10-340(9), except that such company is not formed or licensed under the laws of this State but is formed and licensed under the laws of any jurisdiction within the United States other than this State.
- (2) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who have pooled their liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.
- (3) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of the Workers' Compensation Act. (1945, c. 752, s. 2; 1985 (Reg. Sess., 1986), c. 928, s. 12; 1995, c. 360, s. 1(b); 2013-116, s. 6(a); 2018-5, s. 38.2(e).)

**§ 105-228.4:** Recodified as § 58-6-7 by Session Laws 1995, c. 360, s. 1(c).

**§ 105-228.4A. Tax on captive insurance companies.**

(a) Tax Levied. – A tax is levied in this section on a captive insurance company doing business in this State. In the case of a branch captive insurance company, the tax levied in this section applies only to the branch business of the company. Two or more captive insurance companies under common ownership and control are taxed under this section as a single captive insurance company. The tax levied in this section does not apply to a foreign captive insurance company.

(b) Other Taxes. – A captive insurance company that is subject to the tax levied by this section and a foreign captive insurance company are not subject to any of the following:

- (1) Franchise taxes imposed by Article 3 of this Chapter.
- (2) Income taxes imposed by Article 4 of this Chapter, subject to the provisions of G.S. 105-130.5A.
- (3) Local privilege taxes or local taxes computed on the basis of gross premiums.
- (4) The insurance regulatory charge imposed by G.S. 58-6-25.

(c) Administration. – The definitions in G.S. 58-10-340 apply in this section. A company subject to this section must file with the Secretary a full and accurate report of the premiums contracted for or collected on policies or contracts of insurance written by the company during the preceding calendar year. In the case of a multiyear policy or contract, the premiums must be prorated among the years covered by the policy or contract. The report is due on or before March 15. The taxes imposed by this section are due to the Secretary with the report.

(d) Tax on Assumed Reinsurance Premiums. – The tax to be applied to assumed reinsurance premiums is computed at the percentages provided in the table below. The tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (e) of this section. The tax is not payable in connection with the receipt of assets

in exchange for the assumption of loss reserves and other liabilities of one insurer by another insurer if the two insurers are under common control and the Commissioner of Insurance verifies both of the following: (i) the transaction between the insurers is part of a plan to discontinue the operations of one of the insurers, and (ii) the intent of the insurers is to renew or maintain business with the captive insurance company.

<b>Premiums Collected</b>	<b>Rate of Tax</b>
Up to \$20,000,000	.225%
\$20,000,000 to \$40,000,000	.150%
\$40,000,000 to \$60,000,000	.050%
\$60,000,000 and over	.025%

(e) Tax on Direct Premiums. – The tax to be applied to direct premiums is computed at the percentages provided in the table below. In determining the amount of premiums subject to tax under this subsection, the taxpayer may deduct the amounts paid to policyholders as return premiums. Return premiums include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

<b>Premiums Collected</b>	<b>Rate of Tax</b>
Up to \$20,000,000	0.4%
\$20,000,000 and more	0.3%

(f) Total Tax Liability. – The aggregate amount of tax payable under this section by a protected cell captive insurance company with more than 10 cells may not be less than ten thousand dollars (\$10,000) and may not exceed the lesser of (i) one hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells over 10 and (ii) two hundred thousand dollars (\$200,000). The aggregate amount of tax payable under this section for any other captive insurance company may not be less than five thousand dollars (\$5,000) and may not exceed one hundred thousand dollars (\$100,000).

If a captive insurance company is a special purpose financial captive and if the special purpose financial captive is under common ownership and control with one or more other captive insurance companies, the following provisions apply to the consolidated group of companies that are taxed as a single captive insurance company pursuant to subsection (a) of this section:

- (1) The amount of premium tax payable under this section is allocated to each member of the consolidated group in the same proportion that the premium allocable to the member bears to the total premium of all members.
- (2) The aggregate amount of tax payable under this section by the consolidated group is equal to the greater of the following:
  - a. The sum of the premium tax allocated to the members.
  - b. Five thousand dollars (\$5,000).
- (3) If the total premium tax allocated to all members of a consolidated group that are special purpose financial captives exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to those members is one hundred thousand dollars (\$100,000).
- (4) If the total premium tax allocated to all members of the consolidated group that are not special purpose financial captives exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to those members is one hundred thousand dollars (\$100,000). (2013-116, s. 6(b); 2014-3, s. 14.11; 2018-5, s. 38.2(f).)

**§ 105-228.5. Taxes measured by gross premiums.**

(a) Tax Levied. – A tax is levied in this section on insurers, Article 65 corporations, health maintenance organizations, and self-insurers. An insurer, health maintenance organization, or Article 65 corporation that is subject to the tax levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. –

- (1) Insurers. – The tax imposed by this section on an insurer or a health maintenance organization shall be measured by gross premiums from business done in this State during the preceding calendar year.
- (2) Repealed by Session Laws 2006-196, effective for taxable years beginning on or after January 1, 2008.
- (3) Article 65 Corporations. – The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year.
- (4) Self-insurers. – The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer's payroll for the previous calendar year as determined under Article 36 of Chapter 58 of the General Statutes modified by the self-insurer's approved experience modifier.

(b1) Calculation of Tax Base. – In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other health care plans and contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, means all premiums written during the calendar year, or the equivalent thereof in the case of

self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums, and the gross amount of excluded premiums is exempt from the tax imposed by this section:

- (1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.
- (4) The following premiums, to the extent federal law prohibits their taxation under this Article:
  - a. Federal Employees Health Benefits Plan premiums.
  - b. Medicaid or Medicare premiums.

(d) **(See Editor's note)** Tax Rates; Disposition. –

- (1) Workers' Compensation. – The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, on contracts applicable to liabilities under the Workers' Compensation Act is two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
- (2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on all other taxable contracts issued by insurers or health maintenance organizations and to be applied to gross premiums and gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations is one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
- (3) Additional Rate on Property Coverage Contracts. – An additional tax at the rate of seventy-four hundredths percent (0.74%) applies to gross premiums on insurance contracts for property coverage. The tax is imposed on ten percent (10%) of the gross premiums from insurance contracts for automobile physical damage coverage and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty percent (20%) of the net proceeds of this additional tax must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty percent (20%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with G.S. 58-87-10(f), must

be credited to the Workers' Compensation Fund. The remaining net proceeds must be credited to the General Fund. The additional tax imposed on property coverage contracts under this subdivision is a special purpose assessment based on gross premiums and not a gross premiums tax.

The following definitions apply in this subdivision:

- a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.
  - b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery. The term also includes insurance contracts for wind damage.
  - c. NAIC. – National Association of Insurance Commissioners.
- (4) Repealed by Session Laws 2006-196, effective for taxable years beginning on or after January 1, 2008.
  - (5) Repealed by Session Laws 2003-284, s. 43.1, effective for taxable years beginning on or after January 1, 2004.
  - (6) Repealed by Session Laws 2005-276, s. 38.4(a), effective for taxable years beginning on or after January 1, 2007.

(e) Report and Payment. – Each taxpayer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The taxes imposed by this section shall be remitted to the Secretary with the report.

(f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment or an overpayment of an installment payment required by this subsection accrues interest in accordance with G.S. 105-241.21. An overpayment of tax shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. – This section does not apply to any of the following:

- (1) A farmers' mutual assessment fire insurance company.
- (2) A fraternal order or society that does not operate for a profit and does not issue policies on any person except members.
- (3) A captive insurance company taxed under G.S. 105-228.4A.

- (4) A foreign captive insurance company that is licensed in and taxed on its gross premiums in a jurisdiction within the United States other than this State. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, ss. 1-5; 1987, c. 709, s. 2; c. 814, s. 2; 1989 (Reg. Sess., 1990), c. 814, s. 27; 1991, c. 689, s. 297; 1993 (Reg. Sess., 1994), c. 600, s. 4; 1995, c. 360, s. 1(d); 1995 (Reg. Sess., 1996), c. 747, s. 2; 1998-98, s. 17; 2001-424, s. 34.22(a), (d), (e); 2001-487, s. 69(a); 2001-489, s. 2(a)-(d), (f), (g); 2003-284, s. 43.1; 2005-276, s. 38.4(a); 2005-435, s. 57(a); 2006-196, ss. 1-5; 2007-250, s. 1; 2007-491, s. 23; 2013-116, s. 6(c); 2013-360, s. 20.2(a); 2014-64, s. 3(b); 2016-5, s. 1.4; 2017-204, s. 1.11(a); 2018-5, s. 38.2(g).)

**§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and Health Insurance Guaranty Association.**

(a) The following definitions apply in this section:

- (1) Assessment. – An assessment as described in G.S. 58-48-35 or an assessment as described in G.S. 58-62-41.
- (2) Association. – The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.
- (3) Repealed by Session Laws 1995, c. 360, s. 1(e).
- (4) Member insurer. – A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in G.S. 58-62-16.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or G.S. 58-62-41, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers to this State in the manner required by the Secretary of Revenue. The Association shall notify the Secretary that the refunds have been made. (1991, c. 689, s. 298; 1991 (Reg. Sess., 1992), c. 1007, s. 8; 1995, c. 360, s. 1(e).)

**§ 105-228.5B. Distribution of part of tax proceeds to High Risk Pool.**

By November 1 of each year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to thirty percent (30%) of the growth in revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less \$475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on

premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision. (2007-532, s. 4(a), (b); 2008-118, s. 3.2(d), (e); 2009-445, s. 10.)

**§ 105-228.6. Taxes in case of withdrawal from State.**

Any insurance company which for any cause withdraws from this State or ceases to register and transact new business in this State shall be liable for the taxes specified in G.S. 105-228.5 with respect to gross premiums collected in the calendar year in which such withdrawal may occur. In case any company which was formerly licensed or registered in this State and which subsequently ceased to do business therein, may apply to reenter this State, application for reentry or renewal of registration shall be denied unless and until said company shall have paid all taxes, together with any penalties and interest, due as to premiums collected in the year of withdrawal and also taxes as specified in G.S. 105-228.5 for gross premiums collected in the calendar year next preceding the year in which such application for renewal of registration is made. (1945, c. 752, s. 2; 1985 (Reg. Sess., 1986), c. 1031, s. 5.1; 1987, c. 814, s. 4; 1989, c. 346, s. 1.)

**§ 105-228.7: Repealed by Session Laws 1987, c. 629, s. 21.**

**§ 105-228.8. Retaliatory premium taxes.**

(a) When the laws of any other state impose, or would impose, any premium taxes, upon North Carolina companies doing business in the other state that are, on an aggregate basis, in excess of the premium taxes directly imposed upon similar companies by the statutes of this State, the Secretary of Revenue shall impose the same premium taxes, on an aggregate basis, upon the companies chartered in the other state doing business or seeking to do business in North Carolina. Any company subject to the retaliatory tax imposed by this section shall report and pay the tax with the annual premium tax return required by G.S. 105-228.5. The retaliatory tax imposed by this section shall be included in the quarterly prepayment rules for premium taxes.

(b) For purposes of this section, the following definitions shall be applied:

(1) "State" includes the District of Columbia and other states, territories, and possessions of the United States, the provinces of Canada, and other nations.

(2) "Companies" includes all entities subject to tax under G.S. 105-228.5.

(c) For purposes of this section, any premium taxes that are, or would be, imposed upon North Carolina companies by any city, county, or other political subdivision or agency of another state shall be deemed to be imposed directly by that state.

(d) In computing the premium taxes that another state imposes, or would impose, upon a North Carolina company doing business in the state, it shall be assumed that North Carolina companies pay the highest rates of premium tax that are generally imposed by the other state on similar companies chartered outside of the state.

(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums.

(f) If the laws of another state retaliate against North Carolina companies on other than an aggregate basis, the Secretary of Revenue shall retaliate against companies chartered in that state on the same basis. (1945, c. 752, s. 2; 1987, c. 814, s. 1; 1989 (Reg. Sess., 1990), c. 1069, s. 21; 1991, c. 689, s. 291; 1995, c. 360, s. 1(f); 2011-330, s. 10.)

**§ 105-228.9. Commissioner of Insurance to administer portions of Article.**

The following taxes relating to insurance are collected by the Commissioner of Insurance:

- (1) Surplus lines tax, G.S. 58-21-85.
- (2) Tax on risk retention groups not chartered in this State, G.S. 58-22-20(3).
- (3) Tax on person procuring insurance directly with an unlicensed insurer, G.S. 58-28-5(b).

The Commissioner of Insurance has the same authority and responsibility in administering those taxes as the Secretary of Revenue has in administering this Article. (1945, c. 752, s. 2; 1955, c. 1350, s. 22; 1973, c. 476, s. 193; 1987, c. 804, s. 9; 1995, c. 360, s. 1(a); 1995 (Reg. Sess., 1996), c. 747, s. 1.)

**§ 105-228.10. No additional local taxes.**

No city or county may levy on a person subject to the tax levied in this Article a privilege tax or a tax computed on the basis of gross premiums. (1945, c. 752, s. 2; 1998-98, s. 18.)